

will be sufficiently addressed in docket 06-187, and argue that the current docket is the best venue for a determination.<sup>72</sup>

53. Staff agreed that RCC and USCOC are participating in docket 06-187 and acknowledged that the issue of applicability of the standards to wireless ETC has not been addressed. Staff stated that the parties to that docket are determining what issues can be agreed to and what issues will need to be presented to the Commission for decision.<sup>73</sup> Staff stated that to the extent agreement is not reached on standards and on which providers the standards should apply to, a procedural schedule will need to be established to address those issues.<sup>74</sup> Staff supported the Commission's decision to defer to docket 06-187, stating that it is premature to decide whether standards that are not yet determined should apply to wireless ETCs.

54. The Commission will not reconsider whether to address the applicability of the billing standards in this docket. As the Commission said in its Order, it would be premature to decide applicability. Parties are currently reviewing the billing standards and are working to determine whether agreement can be reached on standards. The better process is to determine applicability to wireless ETCs in the docket opened to review the billing standards rather than in this proceeding.

### VIII. Summary of Decisions

55. On the issue of the advertising requirements, the Commission grants reconsideration as follows: The advertising requirements are to be applied only to print advertising that is designed to reach those customers in a CETC's designated service area. If a

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<sup>72</sup> RCC and USCOC Petition at ¶23.

<sup>73</sup> Staff Response at ¶25.

<sup>74</sup> Staff Response at ¶25 .

CETC chooses not to advertise through print in its designated area, the advertising requirements must be met through another form of advertising.

56. On the issue of requiring optional per minute blocking to Lifeline subscribers, reconsideration is granted to obtain additional information. The Commission seeks additional comment on whether it is technically feasible for CETCs to offer per minute blocking. Additionally, comments are requested that address the incremental cost of such blocking. Comments may address other issues related to per minute blocking. Comments are due **December 20, 2006**. Reply comments are due **January 12, 2007**.

57. Given the arguments and information presented in the Petitions for Reconsideration, the Commission reconsiders its ruling that all ETCS must provide a plan without a termination fee. The offering of such a plan will not be a requirement. Given that decision, the request to reconsider the requirement to advertise a plan without a termination fee is moot.

58. The Commission denies reconsideration of its decisions to allow Lifeline customers to choose a plan and to have the Lifeline discount applied to that plan, its finding that CETCs must file two-year quality improvement plans on an annual basis, and its decision to address the applicability of the billing standards in docket 06-187.

**IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:**

A. The Petitions for Reconsideration are denied in part and granted in part as set

forth above.

B. Any party may file a petition for reconsideration of this order within fifteen days of the date this order is served. If service is by mail, service is complete upon mailing and three days may be added to the above time frame. K.S.A. 66-118; K.S.A. 2005 Supp. 77-529(a)(1).

C. To the extent that this order constitutes final agency action that is subject to judicial review, K.S.A. 77-607(b)(1), the agency officer designated to receive service of any petition for judicial review is Susan K. Duffy, Executive Director, K.S.A. 77-529(c).

D. The Commission retains jurisdiction over the subject matter and parties for the purpose of issuing such further order or orders, as it may deem necessary

BY THE COMMISSION IT IS SO ORDERED.

Moline, Chr.; Krehbiel, Comm.; Moffet, Comm.

Dated: NOV 20 2006

ORDER MAILED

NOV 20 2006

 Executive  
Director

---

Susan K. Duffy  
Executive Director

b1

**ATTACHMENT 5**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

Sprint Spectrum, L.P.,

Plaintiff,

v.

Brian Moline, Robert Krehbiel and Michael  
Moffet, in their Official Capacities as the  
Commissioners of the Kansas Corporation  
Commission,

Defendants.

CIVIL ACTION

No. 07-\_\_\_\_\_ - \_\_\_\_\_

**VERIFIED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF**

Sprint Spectrum, L.P. d/b/a Sprint PCS ("Sprint"), by and through its undersigned counsel, hereby brings this action for declaratory and injunctive relief against defendants Commissioners of the Kansas Corporation Commission ("KCC") (in their official capacities and not as individuals): Brian Moline, Robert Krehbiel and Michael Moffet. In support of its Complaint, Sprint states and alleges as follows:

**I. INTRODUCTION**

1. Sprint seeks a declaratory ruling from this Court that the rule set forth in the KCC's October 2, 2006 Order in Docket No. 06-GIMT-446-GIT requiring an eligible telecommunications carrier ("ETC") to apply federal Lifeline support to reduce the cost of any rate plan offered by the carrier violates federal law (hereafter, the "Kansas Lifeline Rule").

2. Specifically, the Court should declare that the Kansas Lifeline Rule violates 47 U.S.C. § 254(f) and 47 C.F.R. § 54.403(b) because it is inconsistent with the FCC's determination that federal Lifeline support must be applied to reduce the cost of an ETC's lowest-cost generally available residential rate plan.

3. As applied to a CMRS provider, the Court should further declare that the Kansas Lifeline Rule violates 47 U.S.C. § 332(c)(3)(A) as it would require the carrier to provide a reduced rate service without the ability to lawfully recover the subsidy from the federal universal service support fund.

4. Sprint further seeks an initial restraining order and preliminary and final injunctive relief prohibiting the Defendants and any employees or agents of the KCC from taking any action to enforce or attempt to enforce any provision of the Kansas Lifeline Rule against Sprint.

## **II. PARTIES, JURISDICTION AND VENUE**

5. Plaintiff Sprint Spectrum, L.P. is a Delaware limited partnership having its principal place of business at 6200 Sprint Parkway, Overland Park, Kansas 66251. Sprint provides commercial mobile radio services ("CMRS") in the State of Kansas. Sprint has also been designated as a federal ETC throughout certain defined service areas within the State of Kansas.

6. The KCC is a State agency organized under section 74-601 of the Kansas statutes. The KCC is generally authorized to regulate the activities of public utilities providing telephone service in the State of Kansas. However, CMRS providers, like Sprint, are expressly exempt from the KCC's "jurisdiction, regulation, supervision and control" under Kansas law. K.S.A. §§ 66-104a(c) and 66-1,143(b).

7. Defendant Brian Moline is the Chair of the KCC. Chair Moline is sued in his official capacity for declaratory and injunctive relief.

8. Defendant Robert Krehbiel is a Commissioner of the KCC. Commissioner Krehbiel is sued in his official capacity for declaratory and injunctive relief.

9. Defendant Michael Moffet is a Commissioner of the KCC. Commissioner Moffat is sued in his official capacity for declaratory and injunctive relief.

10. This court has subject matter jurisdiction of the action pursuant to 28 U.S.C. § 1331, in conjunction with 47 U.S.C. § 254, 47 U.S.C. § 332 and 47 C.F.R. § 54.403.

11. An actual, bona fide and justiciable controversy exists between the parties pursuant to 28 U.S.C. § 2201.

12. Venue is proper in this district under 28 U.S.C. § 1391(b) because the Defendants reside in this District and because a substantial part of the events giving rise to this action occurred in this District.

### **III. FACTUAL ALLEGATIONS**

#### **A. The Federal Universal Service Program**

13. The Telecommunications Act of 1996, which amended the Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.* (collectively, “the Act”), established a federal program to ensure that affordable telecommunications services are available to all Americans. 47 U.S.C. §§ 214 and 254. This policy objective is referred to as “universal service.”

14. Congress determined that universal service goals would be accomplished through competition, and directed the Federal Communications Commission (“FCC”) to create a federal universal service funding mechanism that would provide financial support to both incumbent and competitive telecommunications carriers that satisfy basic criteria established by the FCC. Carriers that qualify for such support are referred to as federal “eligible telecommunications carriers” or “ETCs.”

15. The FCC began implementing Sections 214 and 254 of the Act when it issued its first universal service order in 1997. *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, *Report and Order*, FCC 97-157 (rel. May 8, 1997) ¶ 4 (“*Universal*

*Service Order*”). The FCC’s universal service regulations are set forth at Title 47, Part 54 of the Code of Federal Regulations, 47 C.F.R. § 54.1, *et. seq.*

16. As set forth at 47 C.F.R. § 54.101(a)(1)-(a)(9), the FCC designated the following core telecommunications services or functionalities to be supported by the federal universal service support mechanisms (hereafter, the “Supported Services”):

- (a) Voice-grade access to the public switched telephone network;
- (b) Local usage;
- (c) Dual tone multi-frequency signaling or its functional equivalent;
- (d) Single-party service or its functional equivalent;
- (e) Access to emergency services;
- (f) Access to operator services;
- (g) Access to interexchange services;
- (h) Access to directory assistance; and
- (i) Toll limitation for qualifying low-income consumers.

**B. The Federal Lifeline and Link Up Assistance Programs**

17. The FCC has also established federal universal service mechanisms that provide public assistance to qualified, low-income consumers. These universal service mechanisms are known as the federal “Lifeline” and “Link Up” programs. The FCC regulations governing the Lifeline and Link Up programs were codified at 47 C.F.R., Part 54, Subpart E (47 C.F.R. §§ 54.400 through 54.417).

**1. Lifeline**

18. The federal Lifeline program reimburses an ETC for providing qualified, low-income consumers a monthly discount off the cost of the carrier’s lowest-cost residential rate plan. As set forth in the FCC’s universal service rules, Lifeline is defined as “a retail local



service offering: (1) [t]hat is available only to qualifying low-income consumers; (2) [f]or which qualifying low-income consumers pay reduced charges as a result of application of the Lifeline support amount described in [47 C.F.R. §] 54.403." 47 C.F.R. § 54.401(a) (emphasis added).

19. FCC Rule 54.403 defines both the amount of federal Lifeline support available and the limitations on the application of such support. Pursuant to 47 C.F.R. § 54.403, federal Lifeline support is comprised of four assistance credits or "Tiers." "Tier One" support is equal to the monthly "tariffed rate in effect for the primary residential End User Common Line charge<sup>1</sup> of the incumbent local exchange carrier serving the area in which the qualifying low-income consumer receives service." "Tier Two" support is equal to \$1.75 per month. "Tier Three" support is equal to "one-half the amount of any state-mandated Lifeline support or Lifeline support otherwise provided by the carrier, up to a maximum of \$1.75 per month." If applicable, "Tier Four" provides up to an additional \$25 per month for an eligible resident of Tribal lands, provided the additional support does not bring the basic local residential rate below \$1 per month.

20. Application of the federal Lifeline support credits to a qualifying customer's basic residential rate is governed by 47 C.F.R. § 54.403(b), which provides in pertinent part:

Eligible telecommunications carriers that charge federal End User Common Line charges or equivalent federal charges shall apply Tier-One federal Lifeline support to waive the federal End-User Common Line charges for Lifeline consumers. Such carriers shall apply any additional federal support amount to a qualifying low-income consumer's intrastate rate, if the carrier has received the non-federal regulatory approvals necessary to implement the required rate reduction. Other eligible telecommunications carriers shall apply the Tier-One federal Lifeline support amount, plus any additional support amount, to reduce their lowest tariffed (or otherwise generally available) residential rate for the services enumerated in Sec. 54.101(a)(1) through (a)(9), and charge Lifeline consumers the resulting amount.

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<sup>1</sup> The "End User Common Line" charge is also referred to as the "Subscriber Line Charge" or "SLC."

47 C.F.R. § 54.403(b) (emphasis added).

21. In adopting the regulations discussed above, the FCC clarified that a federal ETC must apply the federal Lifeline support it receives to the carrier's lowest generally available rate for the Supported Services:

These rules require that carriers offer qualified low-income consumers the services that must be included within Lifeline service, as discussed more fully below, including toll-limitation service. ILECs providing Lifeline service will be required to waive Lifeline customers' federal SLCs and, conditioned on state approval, to pass through to Lifeline consumers an additional \$1.75 in federal support. ILECs will then receive a corresponding amount of support from the new support mechanisms. Other eligible telecommunications carriers will receive, for each qualifying low income consumer served, support equal to the federal SLC cap for primary residential and single-line business connections, plus \$1.75 in additional federal support conditioned on state approval. The federal support amount must be passed through to the consumer in its entirety. In addition, all carriers providing Lifeline service will be reimbursed from the new universal service support mechanisms for their incremental cost of providing toll-limitation services to Lifeline customers who elect to receive them. The remaining services included in Lifeline must be provided to qualifying low-income consumers at the carrier's lowest tariffed (or otherwise generally available) rate for those services, or at the state's mandated Lifeline rate, if the state mandates such a rate for low-income consumers.

*Universal Service Order*, ¶ 368 (emphasis added).

22. Likewise, in formulating its initial universal service recommendations to the FCC in 1996, the Federal-State Joint Board on Universal Service (the "Joint Board") determined that the "Lifeline rate" to be made available to qualified, low-income consumers shall be "the carrier's lowest comparable non-Lifeline rate reduced by at least the \$5.25 [now \$8.25] amount of federal support." *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, *Recommended Decision*, FCC 96J-3, ¶ 424 (rel. Nov. 8, 1996).

23. Accordingly, all federal ETCs must apply the federal Lifeline support discounts to reduce the cost of the carrier's lowest residential rate.

## **2. Link Up**

24. The federal Link Up program reimburses ETCs for providing discounted service activation or installation charges to qualified, low-income consumers. Consumers qualifying for Link Up assistance are eligible to save up to 50% of the first \$60 of the ETC's customary service activation or installation charges (*i.e.*, the subscriber will receive a 50% discount or \$30.00, whichever is less). Qualified, low-income consumers residing on federally-recognized Tribal lands may receive an additional \$70 to defray 100% of the service activation or installation charges between \$60 and \$130.

25. Eligible consumers may also establish an interest-free 12-month deferred payment plan for the remaining activation or installation charges of up to \$200.

26. Federal Link Up assistance may only be applied once to initiate service at the same principal residence, and Link Up assistance cannot be applied to customer facilities or equipment, including the cost of the customer's phone.

### **C. State Administration of Federal Universal Service Programs**

27. Section 214(e) of the Act provides that a State commission – here the KCC – has the authority and responsibility to designate carriers as eligible to receive federal universal service support.

28. Section 254(f) of the Act further provides that a State may adopt additional regulations governing the provision of universal service within its jurisdiction, provided (1) any additional regulations are not inconsistent with the FCC's universal service rules, and (2) the State adopts a separate funding mechanism to support compliance with the additional requirements. Section 254(f) provides in pertinent part:

A State may adopt regulations not inconsistent with the [FCC's] rules to preserve and advance universal service. [ . . . ] A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service

within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.

47 U.S.C. § 254(f) (emphasis added).

29. A State's adoption of additional universal service regulations may be further restrained by certain jurisdictional limitations. Specifically relevant to this case are the jurisdictional limitations set forth in Section 332(c)(3)(A) of the Act, which expressly prohibit State regulation of CMRS carrier rates and entry as follows:

Notwithstanding sections 152(b) and 221(b) of this title, no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services . . . .

47 U.S.C. § 332(c)(3)(A) (emphasis added).

**D. The Kansas Lifeline Rule Violates Federal Law**

30. In October 2005, the KCC commenced an administrative rulemaking proceeding (Docket No. 06-GIMT-446-GIT) to review the adoption of certain additional regulations and requirements applicable to carriers designated as federal ETCs in Kansas. On October 2, 2006, the KCC released an Order adopting the following requirement:

ETCs are required to allow Lifeline customers to choose a calling plan and to apply the Lifeline discount to the plan selected by the customer. Any ETC that does not allow customer selection at this time must do so within 180 days [*i.e.*, by March 31, 2007] of the date of this Order.

31. In other words, the KCC directed all ETCs to apply the federal Lifeline discounts to any calling plan selected by the consumer, rather than a carrier's lowest cost residential rate plan as required by 47 C.F.R. § 54.403(b).

32. Sprint sought reconsideration of the KCC's Order. The KCC denied Sprint's petition for reconsideration of the Kansas Lifeline Rule. At this time, the KCC's rulemaking proceeding is still pending with respect to other issues.

33. The Kansas Lifeline Rule set forth above violates federal law for the following three reasons:

(a) The Kansas Lifeline Rule is inconsistent and cannot be reconciled with the FCC's universal service rules in violation of 47 U.S.C. § 254(f);

(b) Compliance with the Kansas Lifeline Rule would require a federal ETC to inappropriately apply federal Lifeline support to reduce the cost of any calling plan selected by the consumer, rather than the carrier's lowest cost residential rate plan as required by 47 C.F.R. § 54.403(b); and

(c) Compliance with the Kansas Lifeline Rule would require a CMRS provider designated as a federal ETC to provide an equivalent monthly service discount to qualified, low-income consumers that will not be reimbursed by federal universal service support. As a result, the rule would impermissibly regulate a CMRS carrier's rates in violation of 47 U.S.C. § 332(c)(3)(A).

34. Compliance with the Kansas Lifeline Rule will cause irreparable harm as Sprint would be required to violate federal law to satisfy the State law requirement.

35. Enjoining the enforcement of the Kansas Lifeline Rule will maintain the *status quo* and serve the public interest by ensuring eligible, low-income consumers are not denied federal Lifeline assistance.

36. Enjoining the enforcement of the Kansas Lifeline Rule will not adversely affect Defendants or Kansas universal service consumers.

37. For these reasons, the Court should declare the Kansas Lifeline Rule preempted by federal law and issue a temporary restraining order and preliminary and permanent injunction against the enforcement of the requirement against Sprint.

**IV. CLAIMS FOR RELIEF**

**COUNT I**

**Violation of 47 U.S.C. § 254(f)**

38. Sprint incorporates by reference the preceding paragraphs as though fully set forth herein.

39. By adopting regulatory requirements that are inconsistent with the FCC's implementation of the federal Lifeline and Link Up requirements, the Kansas Lifeline Rule violates 47 U.S.C. § 254(f).

40. Sprint therefore seeks a declaration pursuant to 28 U.S.C. § 2201 that the Kansas Lifeline Rule is preempted by federal law and a temporary restraining order and orders preliminarily and permanently enjoining the enforcement of the requirement against Sprint.

**COUNT II**

**Violation of 47 C.F.R. § 54.403(b)**

41. Sprint incorporates by reference the preceding paragraphs as though fully set forth herein.

42. By adopting regulatory requirements that are inconsistent with the FCC's implementation of the federal Lifeline and Link Up requirements, the Kansas Lifeline Rule violates 47 C.F.R. § 54.403(b).

43. Sprint therefore seeks a declaration pursuant to 28 U.S.C. § 2201 that the Kansas Lifeline Rule is preempted by federal law and a temporary restraining order and orders preliminarily and permanently enjoining the enforcement of the requirement against Sprint.

### **COUNT III**

#### **Violation of 47 U.S.C. § 332(c)(3)(A)**

44. Sprint incorporates by reference the preceding paragraphs as though fully set forth herein.

45. By adopting regulatory requirements that are inconsistent with the FCC's implementation of the federal Lifeline and Link Up requirements, the Kansas Lifeline Rule would require Sprint to provide an equivalent monthly service discount to qualified low-income consumers that will not be reimbursed by federal universal service support. As a result, the Kansas Lifeline Rule would impermissibly regulate Sprint's rates in violation of 47 U.S.C. § 332(c)(3)(A).

46. Sprint therefore seeks a declaration pursuant to 28 U.S.C. § 2201 that the Kansas Lifeline Rule is preempted by federal law and an Order preliminarily and permanently enjoining the enforcement of the requirement against Sprint.

**WHEREFORE**, Sprint prays for the following relief:

1. For an Order declaring that the Kansas Lifeline Rule is preempted by federal law, specifically 47 U.S.C. § 254(f), 47 U.S.C. § 332(c)(3)(A) and 47 C.F.R. § 54.403(b);
2. For temporary restraining order and preliminary injunction enjoining the Defendants and any employees or agents of the Kansas Corporation Commission from taking any action to enforce or attempt to enforce any provision of the Kansas Lifeline Rule against Sprint;
3. For an Order permanently enjoining the Defendants and any employees or agents of the Kansas Corporation Commission from taking any action to enforce or attempt to enforce any provision of the Kansas Lifeline Rule against Sprint; and

4. For and Order granting Sprint such further relief as the Court may deem just and reasonable.

Dated: March 23, 2007.

Respectfully submitted,

STINSON MORRISON HECKER LLP

/s/ Mark D. Hinderks

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*ATTORNEYS FOR PLAINTIFF  
SPRINT SPECTRUM, L.P.*

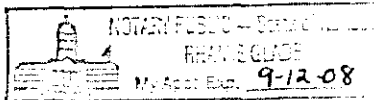


VERIFICATION

STATE OF KANSAS       )  
                                  ) ss.  
COUNTY OF JOHNSON )

I, John E. Mitus, have read the contents of the above Verified Complaint. Based on my personal knowledge, the facts stated therein are true, excepting those facts which are stated upon information and belief. Based upon reliable information, I believe the facts stated upon information and belief are true.

SPRINT SPECTRUM, L.P.



John E. Mitus  
By John E. Mitus  
Its Manager ETC Program Office

Subscribed and sworn to before me  
this 21<sup>ST</sup> day of March, 2007.

Rrami Glade  
Notary Public

1999061v7

## **ATTACHMENT 6**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

Sprint Spectrum, L.P.,

Plaintiff,

v.

Brian Moline, Robert Krehbiel and Michael  
Moffet, in their Official Capacities as the  
Commissioners of the Kansas Corporation  
Commission,

Defendants.

CIVIL ACTION

No. 07-\_\_\_\_\_ - \_\_\_\_\_

**SPRINT SPECTRUM, L.P.'S MOTION FOR A TEMPORARY  
RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION**

Sprint Spectrum, L.P. d/b/a Sprint PCS ("Sprint"), through its undersigned counsel, hereby respectfully moves this Court, pursuant to Federal Rule of Civil Procedure Rule 65, for a temporary restraining order and/or preliminary injunction enjoining the enforcement of a recently adopted Kansas Corporation Commission ("KCC") administrative rule (hereafter, the "Kansas Lifeline Rule"). The Kansas Lifeline Rule would inappropriately require all eligible telecommunications carriers ("ETC") operating in Kansas to apply federal Lifeline universal service support to reduce the cost of any rate plan offered by the carrier, rather than the carrier's lowest cost generally available residential rate plan as expressly required by 47 C.F.R. § 54.403(b).

The Kansas Lifeline Rule will take effect March 31, 2007. Without preliminary injunctive relief, Sprint will suffer immediate and ongoing irreparable harm. As demonstrated in Sprint's Verified Complaint and motion papers, enforcement of the Kansas Lifeline Rule would require Sprint to violate federal law in order to satisfy this new State law requirement. Sprint,

therefore, seeks preliminary injunctive relief to maintain the *status quo* pending final adjudication of the validity of this decision.

In addition to demonstrating irreparable harm, Sprint's motion satisfies each of the additional criteria for the granting of preliminary injunctive relief. As further demonstrated in Sprint's Verified Complaint and motion papers, the balance of harms favors Sprint, preliminary injunctive relief will serve the public interest and Sprint is likely to succeed on the merits.

Sprint's counsel will attempt immediate service of the motion on the Defendants via fax and/or email once the Complaint and Motion have been filed and the case number has been assigned and will further attempt to notify Defendants by telephone of the motion as soon as possible.

Sprint requests that this Court issue a temporary restraining order effective immediately. Sprint further requests that this Court schedule a hearing on a preliminary injunction pursuant to Rule 65(a) of the Federal Rules of Civil Procedure during the period between consideration of Sprint's motion for a temporary restraining order and the time at which the temporary restraining order expires.

Respectfully submitted,

STINSON MORRISON HECKER LLP

/s/ Mark D. Hinderks

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*ATTORNEYS FOR PLAINTIFF  
SPRINT SPECTRUM, L.P.*

## **ATTACHMENT 7**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

Sprint Spectrum, L.P.,

Plaintiff,

v.

Brian Moline, Robert Krehbiel and Michael  
Moffet, in their Official Capacities as the  
Commissioners of the Kansas Corporation  
Commission,

Defendants.

CIVIL ACTION

No. 07-\_\_\_\_\_ - \_\_\_\_\_

**SPRINT SPECTRUM, L.P.'S MEMORANDUM OF LAW  
IN SUPPORT OF ITS MOTION FOR A TEMPORARY  
RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION**

**I. INTRODUCTION**

The Kansas Corporation Commission's ("KCC") unprecedented decision to require all eligible telecommunications carriers ("ETC") operating in Kansas to apply federal Lifeline universal service support to reduce the cost of any rate plan offered by the carrier (hereafter, the "Kansas Lifeline Rule"), beginning March 31, 2007, will place Sprint Spectrum, L.P. d/b/a Sprint PCS ("Sprint") in the untenable position of having to violate federal law to satisfy this new State law requirement. Sprint seeks preliminary injunctive relief to maintain the *status quo* pending adjudication of the validity of this decision under federal law, without placing Sprint in legal jeopardy of choosing to violate federal or state law.

Specifically, the Kansas Lifeline Rule violates 47 U.S.C. § 254(f) and 47 C.F.R. § 54.403(b) because it is inconsistent with the Federal Communications Commission's ("FCC") determination that federal low-income universal service support must be applied to reduce the cost of an ETC's lowest-cost generally available residential rate.

As applied to a commercial mobile radio service (“CMRS”) provider, like Sprint, the Kansas Lifeline Rule will further violate 47 U.S.C. § 332(c)(3)(A) because it would require Sprint to discount its rates without the ability to lawfully recover the subsidy from the federal universal service support fund.

To avoid this result, and to preserve the *status quo* pending final resolution of the issues presented in this proceeding, the Court should therefore issue a temporary restraining order and/or preliminary injunction preventing the enforcement of the Kansas Lifeline Rule until such time as the Court may issue its final decision.

## **II. FACTS**

### **A. The Federal Universal Service Program**

The Telecommunications Act of 1996, which amended the Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.* (collectively, “the Act”), established a federal program to ensure that affordable telecommunications services are available to all Americans. 47 U.S.C. §§ 214 and 254. This policy objective is referred to as “universal service.”

Congress determined that universal service goals would be accomplished through competition, and directed the Federal Communications Commission (“FCC”) to create a federal universal service funding mechanism that would provide financial support to both incumbent and competitive telecommunications carriers that satisfy basic criteria established by the FCC. Carriers that qualify for such support are referred to as federal “eligible telecommunications carriers” or “ETCs.”

The FCC began implementing Sections 214 and 254 of the Act when it issued its first universal service order in 1997. *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, *Report and Order*, FCC 97-157, 12 FCC Rcd. 8776, 62 FR 32862



(rel. May 8, 1997) (“*Universal Service Order*”). The FCC’s universal service regulations are set forth at Title 47, Part 54 of the Code of Federal Regulations, 47 C.F.R. § 54.1, *et. seq.*

As set forth at 47 C.F.R. § 54.101(a)(1)-(a)(9), the FCC designated the following core telecommunications services or functionalities to be supported by the federal universal service support mechanisms (hereafter, the “Supported Services”): Voice-grade access to the public switched telephone network; Local usage; Dual tone multi-frequency signaling or its functional equivalent; Single-party service or its functional equivalent; Access to emergency services; Access to operator services; Access to interexchange services; Access to directory assistance; and Toll limitation for qualifying low-income consumers.

**B. State Administration of Federal Universal Service Programs**

Section 214(e) of the Act provides that a State commission – here the KCC – has the authority to designate carriers as eligible to receive federal universal service support. Pursuant to this delegated authority, the KCC in 2000 designated Sprint as a competitive federal ETC for a defined geographic “service area”<sup>1</sup> within the State of Kansas. Sprint’s designated service area covers only a portion of the State and is smaller than the Company’s FCC-licensed service area in Kansas.

Section 254(f) of the Act further provides that a State may adopt additional regulations governing the provision of universal service within its jurisdiction, provided (1) any additional regulations are not inconsistent with the FCC’s universal service rules, and (2) the State adopts a

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<sup>1</sup> For purposes of universal service requirements, an ETC’s designated “service area” is defined as the “geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms. A service area defines the overall area for which the carrier shall receive support from federal universal service support mechanisms.” 47 C.F.R. § 54.207(a) (emphasis added).